

SECOND REGULAR SESSION

HOUSE BILL NO. 2590

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PLOCHER.

6306H.021

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 400.1-101, 400.1-102, 400.1-103, 400.1-105, 400.1-106, 400.1-107, 400.1-108, 400.1-201, 400.1-202, 400.1-203, 400.1-204, 400.1-205, 400.1-206, 400.1-207, 400.1-208, 400.7-102, 400.7-103, 400.7-104, 400.7-105, 400.7-201, 400.7-202, 400.7-203, 400.7-204, 400.7-205, 400.7-206, 400.7-207, 400.7-208, 400.7-209, 400.7-210, 400.7-301, 400.7-302, 400.7-303, 400.7-304, 400.7-305, 400.7-307, 400.7-308, 400.7-309, 400.7-401, 400.7-402, 400.7-403, 400.7-404, 400.7-501, 400.7-502, 400.7-503, 400.7-504, 400.7-505, 400.7-506, 400.7-507, 400.7-508, 400.7-509, 400.7-601, 400.7-602, 400.7-603, and 400.7-604, RSMo, and to enact in lieu thereof sixty-four new sections relating to the uniform commercial code.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 400.1-101, 400.1-102, 400.1-103, 400.1-105, 400.1-106, 400.1-107, 2 400.1-108, 400.1-201, 400.1-202, 400.1-203, 400.1-204, 400.1-205, 400.1-206, 400.1-207, 3 400.1-208, 400.7-102, 400.7-103, 400.7-104, 400.7-105, 400.7-201, 400.7-202, 400.7-203, 4 400.7-204, 400.7-205, 400.7-206, 400.7-207, 400.7-208, 400.7-209, 400.7-210, 400.7-301, 5 400.7-302, 400.7-303, 400.7-304, 400.7-305, 400.7-307, 400.7-308, 400.7-309, 400.7-401, 6 400.7-402, 400.7-403, 400.7-404, 400.7-501, 400.7-502, 400.7-503, 400.7-504, 400.7-505, 7 400.7-506, 400.7-507, 400.7-508, 400.7-509, 400.7-601, 400.7-602, 400.7-603, and 400.7-604, 8 RSMo, are repealed and sixty-four new sections enacted in lieu thereof, to be known as sections 9 400.1-101, 400.1-102, 400.1-103, 400.1-105, 400.1-106, 400.1-107, 400.1-108, 400.1-201, 10 400.1-202, 400.1-203, 400.1-204, 400.1-205, 400.1-206, 400.1-301, 400.1-302, 400.1-303, 11 400.1-304, 400.1-305, 400.1-306, 400.1-307, 400.1-308, 400.1-309, 400.1-310, 400.7-102, 12 400.7-103, 400.7-104, 400.7-105, 400.7-106, 400.7-201, 400.7-202, 400.7-203, 400.7-204,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13 400.7-205, 400.7-206, 400.7-207, 400.7-208, 400.7-209, 400.7-210, 400.7-301, 400.7-302,
14 400.7-303, 400.7-304, 400.7-305, 400.7-307, 400.7-308, 400.7-309, 400.7-401, 400.7-402,
15 400.7-403, 400.7-404, 400.7-501, 400.7-502, 400.7-503, 400.7-504, 400.7-505, 400.7-506,
16 400.7-507, 400.7-508, 400.7-509, 400.7-601, 400.7-602, 400.7-603, 400.7-703, and 400.7-704,
17 to read as follows:

2 400.1-101. **(a)** This chapter shall be known and may be cited as "Uniform Commercial
2 Code".

3 **(b) This article may be cited as Uniform Commercial Code - General Provisions.**

2 400.1-102. [(1) This chapter shall be liberally construed and applied to promote its
2 underlying purposes and policies.

3 (2) Underlying purposes and policies of this chapter are

4 (a) to simplify, clarify and modernize the law governing commercial transactions;

5 (b) to permit the continued expansion of commercial practices through custom, usage
6 and agreement of the parties;

7 (c) to make uniform the law among the various jurisdictions.

8 (3) The effect of provisions of this chapter may be varied by agreement, except as
9 otherwise provided in this chapter and except that the obligations of good faith, diligence,
10 reasonableness and care prescribed by this chapter may not be disclaimed by agreement but the
11 parties may by agreement determine the standards by which the performance of such obligations
12 is to be measured if such standards are not manifestly unreasonable.

13 (4) The presence in certain provisions of this chapter of the words "unless otherwise
14 agreed" or words of similar import does not imply that the effect of other provisions may not be
15 varied by agreement under subsection (3).

16 (5) In this chapter unless the context otherwise requires

17 (a) words in the singular number include the plural, and in the plural include the
18 singular;

19 (b) words of the masculine gender include the feminine and the neuter, and when the
20 sense so indicates words of the neuter gender may refer to any gender.] **This article applies to
21 a transaction to the extent that it is governed by another article of this chapter.**

2 400.1-103. **(a) This chapter must be liberally construed and applied to promote its
2 underlying purposes and policies, which are:**

3 **(1) to simplify, clarify, and modernize the law governing commercial transactions;**

4 **(2) to permit the continued expansion of commercial practices through custom,
5 usage, and agreement of the parties; and**

6 **(3) to make uniform the law among the various jurisdictions.**

7 **(b)** Unless displaced by the particular provisions of this chapter, the principles of law
8 and equity, including the law merchant and the law relative to capacity to contract, principal and
9 agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, [or] **and** other
10 validating or invalidating cause [shall] supplement its provisions.

400.1-105. [(1) Except as provided hereafter in this section, when a transaction bears
2 a reasonable relation to this state and also to another state or nation the parties may agree that
3 the law either of this state or of such other state or nation shall govern their rights and duties.
4 Failing such agreement this chapter applies to transactions bearing an appropriate relation to this
5 state.

6 (2) Where one of the following provisions of this chapter specifies the applicable law,
7 that provision governs and a contrary agreement is effective only to the extent permitted by the
8 law (including the conflict of laws rules) so specified:

9 Rights of creditors against sold goods. Section 400.2-402.

10 Applicability of the Article on Leases. Sections 400.2A-105 and 400.2A-106.

11 Applicability of the Article on Bank Deposits and Collections. Section 400.4-102.

12 Letter of credit. Section 400.5-116.

13 Applicability of the Article on Investment Securities. Section 400.8-110.

14 Law governing perfection, the effect of perfection or nonperfection, and the priority of
15 security interests. Sections 400.9-301 through 400.9-307.] **If any provision or clause of this**
16 **chapter or its application to any person or circumstance is held invalid, the invalidity does**
17 **not affect other provisions or applications of this chapter which can be given effect without**
18 **the invalid provision or application, and to this end the provisions of this chapter are**
19 **severable.**

400.1-106. [(1) The remedies provided by this chapter shall be liberally administered
2 to the end that the aggrieved party may be put in as good a position as if the other party had fully
3 performed but neither consequential or special nor penal damages may be had except as
4 specifically provided in this chapter or by other rule of law.

5 (2) Any right or obligation declared by this chapter is enforceable by action unless the
6 provision declaring it specifies a different and limited effect.] **In this chapter, unless the**
7 **statutory context otherwise requires:**

8 **(1) words in the singular number include the plural, and those in the plural include**
9 **the singular; and**

10 **(2) words of any gender also refer to any other gender.**

400.1-107. [Any claim or right arising out of an alleged breach can be discharged in
2 whole or in part without consideration by a written waiver or renunciation signed and delivered
3 by the aggrieved party.] **Section captions are part of this chapter.**

400.1-108. [If any provision or clause of this chapter or application thereof to any person
2 or circumstances is held invalid, such invalidity shall not affect other provisions or applications
3 of this chapter which can be given effect without the invalid provision or application, and to this
4 end the provisions of this chapter are declared to be severable.] **This chapter modifies, limits,
5 and supersedes the federal Electronic Signatures in Global and National Commerce Act,
6 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of
7 that Act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices
8 described in Section 103(b) of that Act, 15 U.S.C. Section 103(b).**

400.1-201. [Subject to additional definitions contained in the subsequent articles of this
2 chapter which are applicable to specific articles or parts thereof, and] (a) Unless the context
3 otherwise requires, [in this chapter:] **words or phrases defined in this section, or in the
4 additional definitions contained in other articles of this chapter that apply to particular
5 articles or parts thereof, have the meanings stated.**

6 (b) **Subject to definitions contained in other articles of this chapter that apply to
7 particular articles or parts thereof:**

8 (1) "Action", in the sense of a judicial proceeding, includes recoupment, counterclaim,
9 set-off, suit in equity, and any other [proceedings] **proceeding** in which rights are determined.

10 (2) "Aggrieved party" means a party entitled to [resort to] **pursue** a remedy.

11 (3) "Agreement", **as distinguished from "contract"**, means the bargain of the parties
12 in fact, as found in their language or [by implication] **inferred** from other circumstances,
13 including **course of performance**, course of dealing, or usage of trade [or course of
14 performance] as provided in [this chapter (sections 400.1-205 and 400.2-208). Whether an
15 agreement has legal consequences is determined by the provisions of this chapter, if applicable;
16 otherwise by the law of contracts (] section 400.1-103[)]. [(Compare "Contract").]

17 (4) "Bank" means [any] **a person engaged in the business of banking and includes a
18 savings bank, savings and loan association, credit union, and trust company.**

19 (5) "Bearer" means [the] **a person in control of a negotiable electronic document of
20 title or a person in possession of an instrument, a negotiable tangible document of title, or a
21 certificated security payable to bearer or [endorsed] indorsed in blank.**

22 (6) "Bill of lading" means a document **of title** evidencing the receipt of goods for
23 shipment issued by a person engaged in the business of **directly or indirectly** transporting or
24 forwarding goods[, and includes an airbill. "Airbill" means a document serving for air
25 transportation as a bill of lading does for marine or rail transportation, and includes an air
26 consignment note or air waybill]. **The term does not include a warehouse receipt.**

27 (7) "Branch" includes a separately incorporated foreign branch of a bank.

28 (8) "Burden of establishing" a fact means the burden of persuading the [triers] **trier** of
29 fact that the existence of the fact is more probable than its nonexistence.

30 (9) "Buyer in ordinary course of business" means a person that buys goods in good faith
31 [and] , without knowledge that the sale violates the rights of another person in the goods, and in
32 the ordinary course from a person, other than a pawnbroker, in the business of selling goods of
33 that kind. A person buys goods in the ordinary course if the sale to the person comports with the
34 usual or customary practices in the kind of business in which the seller is engaged or with the
35 seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the
36 wellhead or minehead is a person in the business of selling goods of that kind. A buyer in
37 ordinary course of business may buy for cash, by exchange of other property, or on secured or
38 unsecured credit, and may acquire goods or documents of title under a preexisting contract for
39 sale. Only a buyer that takes possession of the goods or has a right to recover the goods from
40 the seller under article 2 may be a buyer in ordinary course of business. **"Buyer in ordinary
41 course of business" does not include** a person that acquires goods in a transfer in bulk or as
42 security for[,] or in total or partial satisfaction of[,] a money debt [is not a buyer in ordinary
43 course of business].

44 (10) "Conspicuous"[:], **with reference to** a term [or clause is conspicuous when it is]
45 , **means** so written, **displayed, or presented** that a reasonable person against [whom] **which** it
46 is to operate ought to have noticed it. [A printed heading in capitals (as: NONNEGOTIABLE
47 BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in
48 larger or other contrasting type or color. But in a telegram any stated term is "conspicuous".]
49 Whether a term [or clause] is "conspicuous" or not is [for] **a decision [by] for** the court.
50 **Conspicuous terms include the following:**

51 (A) **a heading in capitals equal to or greater in size than the surrounding text, or**
52 **in contrasting type, font, or color to the surrounding text of the same or lesser size; and**

53 (B) **language in the body of a record or display in larger type than the surrounding**
54 **text, or in contrasting type, font, or color to the surrounding text of the same size, or set off**
55 **from surrounding text of the same size by symbols or other marks that call attention to the**
56 **language.**

57 (11) **"Consumer"** means an individual who enters into a transaction primarily for
58 **personal, family, or household purposes.**

59 (12) **"Contract", as distinguished from "agreement",** means the total legal obligation
60 [which] **that** results from the parties' agreement as [affected] **determined** by this chapter [and]
61 **as supplemented by** any other applicable [rules of law] **laws.** [(Compare "Agreement".)]

62 [(12)] (13) **"Creditor"** includes a general creditor, a secured creditor, a lien creditor, and
63 any representative of creditors, including an assignee for the benefit of creditors, a trustee in

64 bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or
65 assignor's estate.

66 [(13) "Defendant" includes a person in the position of defendant in a cross-action or
67 counterclaim.]

68 (14) "Delivery", with respect to **an electronic document of title means voluntary**
69 **transfer of control and with respect to** instruments, **tangible** documents of title, chattel paper,
70 or certificated securities means voluntary transfer of possession.

71 (15) **"Document of title" means a record (i) that in the regular course of business**
72 **or financing is treated as adequately evidencing that the person in possession or control of**
73 **the record is entitled to receive, control, hold, and dispose of the record and the goods the**
74 **record covers and (ii) that purports to be issued by or addressed to a bailee and to cover**
75 **goods in the bailee's possession which are either identified or are fungible portions of an**
76 **identified mass. The term includes a bill of lading, transport document, dock warrant,**
77 **dock receipt, warehouse receipt, and order for delivery of goods. An electronic document**
78 **of title means a document of title evidenced by a record consisting of information stored**
79 **in an electronic medium. A tangible document of title means a document of title evidenced**
80 **by a record consisting of information that is inscribed on a tangible medium.**

81 (16) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse
82 receipt or order for the delivery of goods, and also any other document which in the regular
83 course of business or financing is treated as adequately evidencing that the person in possession
84 of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a
85 document of title, a document must purport to be issued by or addressed to a bailee and purport
86 to cover goods in the bailee's possession which are either identified or are fungible portions of
87 an identified mass.

88 [(16)] (17) "Fault" means **a default, breach, or wrongful act[,]** or omission [or breach].

89 [(17)] (18) "Fungible **goods**" [with respect to goods or securities] means:

90 (A) goods [or securities] of which any unit [is], by nature or usage of trade, **is** the
91 equivalent of any other like unit[.] ; **or**

92 (B) goods [which are not fungible shall be deemed fungible for the purposes of this
93 chapter to the extent] that **by** [under a particular] agreement [or document unlike units] are
94 treated as [equivalents] **equivalent**.

95 [(18)] (19) "Genuine" means free of forgery or counterfeiting.

96 [(19)] (20) "Good faith", **except as otherwise provided in article 5**, means honesty in
97 fact [in the conduct or transaction concerned] **and the observance of reasonable commercial**
98 **standards of fair dealing**.

99 [(20)] (21) "Holder" [with respect to a negotiable instrument,] means:

100 (A) the person in possession [if the] **of a negotiable** instrument **that** is payable **either**
101 to bearer or[, in the case of an instrument payable] to an identified person [if the identified] **that**
102 **is the** person [is] in possession[. Holder" with respect to a document of title means] ;

103 (B) the person in possession **of a document of a negotiable tangible document of title**
104 if the goods are deliverable **either** to bearer or to the order of the person in possession[.] ; **or**

105 (C) **the person in control of a negotiable electronic document of title.**

106 [(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase
107 or discount a draft complying with the terms of the credit.]

108 (22) "Insolvency [proceedings] **proceeding**" includes [any] **an** assignment for the benefit
109 of creditors or other [proceedings] **proceeding** intended to liquidate or rehabilitate the estate of
110 the person involved.

111 (23) [A person is] "Insolvent" [who either has] **means:**

112 (A) **having generally** ceased to pay [his or her] debts in the ordinary course of business
113 [or cannot pay his or her] **other than as a result of bona fide dispute;**

114 (B) **being unable to pay** debts as they become due; or [is]

115 (C) **being** insolvent within the meaning of [the] federal bankruptcy law.

116 (24) "Money" means a medium of exchange **currently** authorized or adopted by a
117 domestic or foreign government [and] . **The term** includes a monetary unit of account
118 established by an intergovernmental organization or by agreement between two or more [nations]
119 **countries.**

120 (25) [A person has "notice" of a fact when

121 (a) a person has actual knowledge of it; or

122 (b) a person has received a notice or notification of it; or

123 (c) from all the facts and circumstances known to him or her at the time in question he
124 or she has reason to know that it exists.

125

126 A person "knows" or has "knowledge" of a fact when a person has actual knowledge of it.
127 "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to
128 reason to know. The time and circumstances under which a notice or notification may cease to
129 be effective are not determined by this chapter.

130 (26) A person "notifies" or "gives" a notice or notification to another by taking such
131 steps as may be reasonably required to inform the other in ordinary course whether or not such
132 other actually comes to know of it. A person "receives" a notice or notification when

133 (a) it comes to a person's attention, or

134 (b) it is duly delivered at the place of business through which the contract was made or
135 at any other place held out by a person as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to an individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of an individual's regular duties or unless he or she has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" [includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity] **means a person other than an individual.**

[(29)] (26) "Party", as [distinct] **distinguished** from "third party", means a person [who] **that** has engaged in a transaction or made an agreement [within] **subject to** this chapter.

[(30)] (27) "Person" [includes] **means** an individual [or an organization (see section 400.1-102)] , **corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.**

[(31)] "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) (28) **"Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.**

(29) "Purchase" [includes] **means** taking by sale, **lease**, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

[(33)] (30) "Purchaser" means a person [who] **that** takes by purchase.

[(34)] (31) **"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.**

171 (32) "Remedy" means any remedial right to which an aggrieved party is entitled with or
172 without resort to a tribunal.

173 [(35)] (33) "Representative" [includes an agent, an officer of a corporation or association,
174 and a trustee, executor or administrator of an estate, or any other] **means a person empowered**
175 **to act for another, including an agent, an officer of a corporation or association, and a**
176 **trustee, executor, or administrator of an estate.**

177 [(36) "Rights"] (34) **"Right"** includes [remedies] **remedy.**

178 [(37)] (35) "Security interest" means an interest in personal property or fixtures which
179 secures payment or performance of an obligation. [The term also] **"Security interest"** includes
180 any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a
181 promissory note in a transaction that is subject to article 9. **"Security interest" does not**
182 **include** the special property interest of a buyer of goods on identification of those goods to a
183 contract for sale under section 400.2-401 [is not a "security interest"], but a buyer may also
184 acquire a "security interest" by complying with article 9. Except as otherwise provided in section
185 400.2-505, the right of a seller or lessor of goods under article 2 or 2A to retain or acquire
186 possession of the goods is not a "security interest", but a seller or lessor may also acquire a
187 "security interest" by complying with article 9. The retention or reservation of title by a seller
188 of goods notwithstanding shipment or delivery to the buyer [(**under** section 400.2-401 **D**)] is
189 limited in effect to a reservation of a "security interest". Whether a transaction [creates] **in the**
190 **form of** a lease [or] **creates a** "security interest" is determined [by the facts of each case;
191 however, a transaction creates a security interest if the consideration the lessee is to pay the
192 lessor for the right to possession and use of the goods is an obligation for the term of the lease
193 not subject to termination by the lessee, and

194 (a) the original term of the lease is equal to or greater than the remaining economic life
195 of the goods,

196 (b) the lessee is bound to renew the lease for the remaining economic life of the goods
197 or is bound to become the owner of the goods,

198 (c) the lessee has an option to renew the lease for the remaining economic life of the
199 goods for no additional consideration or nominal additional consideration upon compliance with
200 the lease agreement, or

201 (d) the lessee has an option to become the owner of the goods for no additional
202 consideration or nominal additional consideration upon compliance with the lease agreement.

203

204 A transaction does not create a security interest merely because it provides that

(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(c) the lessee has an option to renew the lease or to become the owner of the goods,

(d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of subsection (37):

(a) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(b) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(c) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38)] pursuant to section 400.1-203.

(36) "Send" in connection with [any] a writing, record, or notice means:

(A) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances[. The receipt of any writing] ; **or**

240 **(B) in any other way to cause to be received any record** or notice within the time [at
241 which] it would have arrived if properly sent [has the effect of a proper sending].

242 [(39)] **(37)** "Signed" includes **using** any symbol executed or adopted [by a party] with
243 present intention to [authenticate] **adopt or accept** a writing.

244 [(40)] "Special property" means identifiable property in which the holder has only a
245 qualified, temporary, or limited interest.

246 (41)] **(38)** "State" means **a State of the United States, the District of Columbia,**
247 **Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject**
248 **to the jurisdiction of the United States.**

249 **(39)** "Surety" includes **a guarantor or other secondary obligor.**

250 [(42)] "Telegram" includes a message transmitted by radio, teletype, cable, any
251 mechanical method of transmission, or the like.

252 (43)] **(40)** "Term" means [that] **a** portion of an agreement [which] **that** relates to a
253 particular matter.

254 [(44)] **(41)** "Unauthorized[" signature" means [one] **a signature** made without actual,
255 implied, or apparent authority [and] . **The term** includes a forgery.

256 [(45)] "Value". Except as otherwise provided with respect to negotiable instruments and
257 bank collections (sections 400.3-303, 400.4-208 and 400.4-209) a person gives "value" for rights
258 if he or she acquires them

259 (a) in return for a binding commitment to extend credit or for the extension of
260 immediately available credit whether or not drawn upon and whether or not a charge-back is
261 provided for in the event of difficulties in collection; or

262 (b) as security for or in total or partial satisfaction of a preexisting claim; or

263 (c) by accepting delivery pursuant to a preexisting contract for purchase; or

264 (d) generally, in return for any consideration sufficient to support a simple contract.

265 (46)] **(42)** "Warehouse receipt" means a receipt issued by a person engaged in the
266 business of storing goods for hire.

267 [(47)] "Written" or] **(43)** "Writing" includes printing, typewriting, or any other
268 intentional reduction to tangible form. **"Written" has a corresponding meaning.**

 400.1-202. [A document in due form purporting to be a bill of lading, policy or
2 certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other
3 document authorized or required by the contract to be issued by a third party shall be prima facie
4 evidence of its own authenticity and genuineness and of the facts stated in the document by the
5 third party.] **(a) Subject to subsection (f), a person has "notice" of a fact if the person:**

6 **(1) has actual knowledge of it;**

7 **(2) has received a notice or notification of it; or**

8 (3) from all the facts and circumstances known to the person at the time in
9 question, has reason to know that it exists.

10 (b) "Knowledge" means actual knowledge. "Knows" has a corresponding
11 meaning.

12 (c) "Discover", "learn", or words of similar import refer to knowledge rather than
13 to reason to know.

14 (d) A person "notifies" or "gives" a notice or notification to another person by
15 taking such steps as may be reasonably required to inform the other person in ordinary
16 course, whether or not the other person actually comes to know of it.

17 (e) Subject to subsection (f), a person "receives" a notice or notification when:

18 (1) it comes to that person's attention; or

19 (2) it is duly delivered in a form reasonable under the circumstances at the place
20 of business through which the contract was made or at another location held out by that
21 person as the place for receipt of such communications.

22 (f) Notice, knowledge, or a notice or notification received by an organization is
23 effective for a particular transaction from the time it is brought to the attention of the
24 individual conducting that transaction and, in any event, from the time it would have been
25 brought to the individual's attention if the organization had exercised due diligence. An
26 organization exercises due diligence if it maintains reasonable routines for communicating
27 significant information to the person conducting the transaction and there is reasonable
28 compliance with the routines. Due diligence does not require an individual acting for the
29 organization to communicate information unless the communication is part of the
30 individual's regular duties or the individual has reason to know of the transaction and that
31 the transaction would be materially affected by the information.

400.1-203. [Every contract or duty within this chapter imposes an obligation of good
2 faith in its performance or enforcement.] (a) Whether a transaction in the form of a lease
3 creates a lease or security interest is determined by the facts of each case.

4 (b) A transaction in the form of a lease creates a security interest if the
5 consideration that the lessee is to pay the lessor for the right to possession and use of the
6 goods is an obligation for the term of the lease and is not subject to termination by the
7 lessee, and:

8 (1) the original term of the lease is equal to or greater than the remaining economic
9 life of the goods;

10 (2) the lessee is bound to renew the lease for the remaining economic life of the
11 goods or is bound to become the owner of the goods;

12 (3) the lessee has an option to renew the lease for the remaining economic life of the
13 goods for no additional consideration or for nominal additional consideration upon
14 compliance with the lease agreement; or

15 (4) the lessee has an option to become the owner of the goods for no additional
16 consideration or for nominal additional consideration upon compliance with the lease
17 agreement.

18 (c) A transaction in the form of a lease does not create a security interest merely
19 because:

20 (1) the present value of the consideration the lessee is obligated to pay the lessor for
21 the right to possession and use of the goods is substantially equal to or is greater than the
22 fair market value of the goods at the time the lease is entered into;

23 (2) the lessee assumes risk of loss of the goods;

24 (3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing,
25 recording, or registration fees, or service or maintenance costs;

26 (4) the lessee has an option to renew the lease or to become the owner of the goods;

27 (5) the lessee has an option to renew the lease for a fixed rent that is equal to or
28 greater than the reasonably predictable fair market rent for the use of the goods for the
29 term of the renewal at the time the option is to be performed; or

30 (6) the lessee has an option to become the owner of the goods for a fixed price that
31 is equal to or greater than the reasonably predictable fair market value of the goods at the
32 time the option is to be performed.

33 (d) Additional consideration is nominal if it is less than the lessee's reasonably
34 predictable cost of performing under the lease agreement if the option is not exercised.
35 Additional consideration is not nominal if:

36 (1) when the option to renew the lease is granted to the lessee, the rent is stated to
37 be the fair market rent for the use of the goods for the term of the renewal determined at
38 the time the option is to be performed; or

39 (2) when the option to become the owner of the goods is granted to the lessee, the
40 price is stated to be the fair market value of the goods determined at the time the option
41 is to be performed.

42 (e) The "remaining economic life of the goods" and "reasonably predictable" fair
43 market rent, fair market value, or cost of performing under the lease agreement must be
44 determined with reference to the facts and circumstances at the time the transaction is
45 entered into.

 400.1-204. [(1) Whenever this chapter requires any action to be taken within a
2 reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

3 (2) What is a reasonable time for taking any action depends on the nature, purpose and
4 circumstances of such action.

5 (3) An action is taken "seasonably" when it is taken at or within the time agreed or if no
6 time is agreed at or within a reasonable time.] **Except as otherwise provided in articles 3, 4,
7 and 5, a person gives value for rights if the person acquires them:**

8 **(1) in return for a binding commitment to extend credit or for the extension of**
9 **immediately available credit, whether or not drawn upon and whether or not a**
10 **charge-back is provided for in the event of difficulties in collection;**

11 **(2) as security for, or in total or partial satisfaction of, a preexisting claim;**

12 **(3) by accepting delivery under a preexisting contract for purchase; or**

13 **(4) in return for any consideration sufficient to support a simple contract.**

400.1-205. [(1) A course of dealing is a sequence of previous conduct between the
2 parties to a particular transaction which is fairly to be regarded as establishing a common basis
3 of understanding for interpreting their expressions and other conduct.

4 (2) A usage of trade is any practice or method of dealing having such regularity of
5 observance in a place, vocation or trade as to justify an expectation that it will be observed with
6 respect to the transaction in question. The existence and scope of such a usage are to be proved
7 as facts. If it is established that such a usage is embodied in a written trade code or similar
8 writing the interpretation of the writing is for the court.

9 (3) A course of dealing between parties and any usage of trade in the vocation or trade
10 in which they are engaged or of which they are or should be aware give particular meaning to
11 and supplement or qualify terms of an agreement.

12 (4) The express terms of an agreement and an applicable course of dealing or usage of
13 trade shall be construed wherever reasonable as consistent with each other; but when such
14 construction is unreasonable express terms control both course of dealing and usage of trade and
15 course of dealing controls usage of trade.

16 (5) An applicable usage of trade in the place where any part of performance is to occur
17 shall be used in interpreting the agreement as to that part of the performance.

18 (6) Evidence of a relevant usage of trade offered by one party is not admissible unless
19 and until he has given the other party such notice as the court finds sufficient to prevent unfair
20 surprise to the latter.] **(a) Whether a time for taking an action required by this chapter is**
21 **reasonable depends on the nature, purpose, and circumstances of the action.**

22 **(b) An action is taken seasonably if it is taken at or within the time agreed or, if no**
23 **time is agreed, at or within a reasonable time.**

400.1-206. [(1) Except in the cases described in subsection (2) of this section a contract
2 for the sale of personal property is not enforceable by way of action or defense beyond five

3 thousand dollars in amount or value of remedy unless there is some writing which indicates that
4 a contract for sale has been made between the parties at a defined or stated price, reasonably
5 identifies the subject matter, and is signed by the party against whom enforcement is sought or
6 by his authorized agent.

7 (2) Subsection (1) of this section does not apply to contracts for the sale of goods
8 (section 400.2-201) nor of securities (section 400.8-113) nor to security agreements (section
9 400.9-203).] **Whenever this chapter creates a "presumption" with respect to a fact, or**
10 **provides that a fact is "presumed", the trier of fact must find the existence of the fact**
11 **unless and until evidence is introduced that supports a finding of its nonexistence.**

400.1-301. (a) Except as otherwise provided in this section, when a transaction
2 **bears a reasonable relation to this state and also to another state or nation the parties may**
3 **agree that the law either of this state or of such other state or nation shall govern their**
4 **rights and duties.**

5 (b) In the absence of an agreement effective under subsection (a), and except as
6 provided in subsection (c), this chapter applies to transactions bearing an appropriate
7 relation to this state.

8 (c) If one of the following provisions of this chapter specifies the applicable law,
9 that provision governs and a contrary agreement is effective only to the extent permitted
10 by the law so specified:

- 11 (1) section 400.2-402;
- 12 (2) sections 400.2A-105 and 400.2A-106;
- 13 (3) section 400.4-102;
- 14 (4) section 400.4A-507;
- 15 (5) section 400.5-116;
- 16 (6) section 400.8-110;
- 17 (7) sections 400.9-301 through 400.9-307.

400.1-302. (a) Except as otherwise provided in subsection (b) or elsewhere in this
2 **chapter, the effect of provisions of this chapter may be varied by agreement.**

3 (b) The obligations of good faith, diligence, reasonableness, and care prescribed by
4 this chapter may not be disclaimed by agreement. The parties, by agreement, may
5 determine the standards by which the performance of those obligations is to be measured
6 if those standards are not manifestly unreasonable. Whenever this chapter requires an
7 action to be taken within a reasonable time, a time that is not manifestly unreasonable may
8 be fixed by agreement.

9 (c) The presence in certain provisions of this chapter of the phrase "unless
10 otherwise agreed", or words of similar import, does not imply that the effect of other
11 provisions may not be varied by agreement under this section.

 400.1-303. (a) A "course of performance" is a sequence of conduct between the
2 parties to a particular transaction that exists if:

3 (1) the agreement of the parties with respect to the transaction involves repeated
4 occasions for performance by a party; and

5 (2) the other party, with knowledge of the nature of the performance and
6 opportunity for objection to it, accepts the performance or acquiesces in it without
7 objection.

8 (b) A "course of dealing" is a sequence of conduct concerning previous transactions
9 between the parties to a particular transaction that is fairly to be regarded as establishing
10 a common basis of understanding for interpreting their expressions and other conduct.

11 (c) A "usage of trade" is any practice or method of dealing having such regularity
12 of observance in a place, vocation, or trade as to justify an expectation that it will be
13 observed with respect to the transaction in question. The existence and scope of such a
14 usage must be proved as facts. If it is established that such a usage is embodied in a trade
15 code or similar record, the interpretation of the record is a question of law.

16 (d) A course of performance or course of dealing between the parties or usage of
17 trade in the vocation or trade in which they are engaged or of which they are or should be
18 aware is relevant in ascertaining the meaning of the parties' agreement, may give
19 particular meaning to specific terms of the agreement, and may supplement or qualify the
20 terms of the agreement. A usage of trade applicable in the place in which part of the
21 performance under the agreement is to occur may be so utilized as to that part of the
22 performance.

23 (e) Except as otherwise provided in subsection (f), the express terms of an
24 agreement and any applicable course of performance, course of dealing, or usage of trade
25 must be construed whenever reasonable as consistent with each other. If such a
26 construction is unreasonable:

27 (1) express terms prevail over course of performance, course of dealing, and usage
28 of trade;

29 (2) course of performance prevails over course of dealing and usage of trade; and

30 (3) course of dealing prevails over usage of trade.

31 (f) Subject to section 400.2-209, a course of performance is relevant to show a
32 waiver or modification of any term inconsistent with the course of performance.

33 (g) Evidence of a relevant usage of trade offered by one party is not admissible
34 unless that party has given the other party notice that the court finds sufficient to prevent
35 unfair surprise to the other party.

 400.1-304. Every contract or duty within this chapter imposes an obligation of good
2 faith in its performance and enforcement.

 400.1-305. (a) The remedies provided by this chapter must be liberally
2 administered to the end that the aggrieved party may be put in as good a position as if the
3 other party had fully performed but neither consequential or special damages nor penal
4 damages may be had except as specifically provided in this chapter or by other rule of law.

 (b) Any right or obligation declared by this chapter is enforceable by action unless
6 the provision declaring it specifies a different and limited effect.

 400.1-306. A claim or right arising out of an alleged breach may be discharged in
2 whole or in part without consideration by agreement of the aggrieved party in an
3 authenticated record.

 400.1-307. A document in due form purporting to be a bill of lading, policy or
2 certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any
3 other document authorized or required by the contract to be issued by a third party is
4 prima facie evidence of its own authenticity and genuineness and of the facts stated in the
5 document by the third party.

 400.1-308. (a) A party that with explicit reservation of rights performs or promises
2 performance or assents to performance in a manner demanded or offered by the other
3 party does not thereby prejudice the rights reserved. Such words as "without prejudice",
4 "under protest", or the like are sufficient.

 (b) Subsection (a) does not apply to an accord and satisfaction.

 400.1-309. A term providing that one party or that party's successor in interest may
2 accelerate payment or performance or require collateral or additional collateral "at will"
3 or when the party "deems itself insecure", or words of similar import, means that the party
4 has power to do so only if that party in good faith believes that the prospect of payment or
5 performance is impaired. The burden of establishing lack of good faith is on the party
6 against which the power has been exercised.

 400.1-310. An obligation may be issued as subordinated to performance of another
2 obligation of the person obligated, or a creditor may subordinate its right to performance
3 of an obligation by agreement with either the person obligated or another creditor of the
4 person obligated. Subordination does not create a security interest as against either the
5 common debtor or a subordinated creditor.

 400.7-102. [(1)] (a) In this article, unless the context otherwise requires:

2 [(a)] **(1) "Bailee" means [the] a person [who] that** by a warehouse receipt, bill of lading,
3 or other document of title acknowledges possession of goods and contracts to deliver them.

4 [(b)] **(2) "Carrier" means a person that issues a bill of lading.**

5 **(3) "Consignee" means [the] a person named in a bill of lading to [whom] which** or to
6 whose order the bill promises delivery.

7 [(c)] **(4) "Consignor" means [the] a person named in a bill of lading** as the person from
8 [whom] **which** the goods have been received for shipment.

9 [(d)] **(5) "Delivery order" means a [written] record that contains an** order to deliver
10 goods directed to a [warehouseman] **warehouse**, carrier, or other person [who] **that** in the
11 ordinary course of business issues warehouse receipts or bills of lading.

12 [(e)] **"Document" means document of title as defined in the general definitions in article**
13 **1 (section 400.1-201).**

14 [(f)] **(6) "Good faith" has the same meaning as in section 400.1-201(a)(6).**

15 **(7) "Goods" means all things [which] that** are treated as movable for the purposes of a
16 contract [of] **for** storage or transportation.

17 [(g)] **(8) "Issuer" means a bailee [who] that** issues a document [except that] **of title or,**
18 in [relation to] **the case of** an unaccepted delivery order [it means] , the person [who] **that** orders
19 the possessor of goods to deliver. [Issuer] **The term** includes [any] **a** person for [whom] **which**
20 an agent or employee purports to act in issuing a document if the agent or employee has real or
21 apparent authority to issue documents, [notwithstanding that] **even if** the issuer [received no] **did**
22 **not receive any** goods [or that] , the goods were misdescribed, or [that] in any other respect the
23 agent or employee violated [his] **the issuer's** instructions.

24 **(9) "Person entitled under the document" means the holder, in the case of a**
25 **negotiable document of title, or the person to which delivery of the goods is to be made by**
26 **the terms of, or pursuant to instructions in a record under, a nonnegotiable document of**
27 **title.**

28 **(10) "Record" has the same meaning as in section 400.1-201(a)(10).**

29 **(11) "Sign" means, with present intent to authenticate or adopt a record:**

30 **(A) to execute or adopt a tangible symbol; or**

31 **(B) to attach to or logically associate with the record an electronic sound, symbol,**
32 **or process.**

33 **(12) "Shipper" means a person that enters into a contract of transportation with**
34 **a carrier.**

35 [(h)] **"Warehouseman" is] (13) "Warehouse" means** a person engaged in the business
36 of storing goods for hire.

37 [(2) Other definitions applying to this article or to specified parts thereof, and the
38 sections in which they appear are:

39 "Duly negotiate". Section 400.7-501.

40 "Person entitled under the document". Section 400.7-403(4).

41 (3)] **(b)** Definitions in other articles applying to this article and the sections in which they
42 appear are:

43 **(1)** "Contract for sale"[.] , section 400.2-106.

44 ["Overseas". Section 400.2-323.]

45 **(2)** "Lessee in ordinary course", section 400.2A-103.

46 **(3)** "Receipt" of goods["."] , section 400.2-103.

47 [(4)] **(c)** In addition, article 1 contains general definitions and principles of construction
48 and interpretation applicable throughout this article.

 400.7-103. [To the extent that] **(a) This article is subject to** any treaty or statute of the
2 United States[.] **or** regulatory statute of this state [or tariff, classification or regulation filed or
3 issued pursuant thereto] **to the extent the treaty, statute, or regulatory statute** is applicable[,
4 the provisions of this article are subject thereto].

5 **(b) This article does not modify or repeal any law prescribing the form or content**
6 **of a document of title or the services or facilities to be afforded by a bailee, or otherwise**
7 **regulating a bailee's business in respects not specifically treated in this article. However,**
8 **violation of such a law does not affect the status of a document of title that otherwise is**
9 **within the definition of a document of title.**

10 **(c) This chapter modifies, limits, and supersedes the federal Electronic Signatures**
11 **in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify,**
12 **limit, or supersede Section 101(c) of that Act, 15 U.S.C. Section 7001(c), or authorize**
13 **electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C.**
14 **Section 7003(b).**

15 **(d) To the extent there is a conflict between the uniform electronic transactions act**
16 **under sections 432.200 to 432.295 and this article, this article governs.**

 400.7-104. [(1) A warehouse receipt, bill of lading or other] **(a) Except as otherwise**
2 **provided in subsection (c), a** document of title is negotiable [(a)] if by its terms the goods are
3 to be delivered to bearer or to the order of a named person[; or] .

4 (b) [where recognized in overseas trade, if it runs to a named person or assigns.

5 (2) Any other] **A document of title other than one described in subsection (a)** is
6 nonnegotiable. A bill of lading [in which it is stated] **that states** that the goods are consigned
7 to a named person is not made negotiable by a provision that the goods are to be delivered only
8 against [a written] **an order in a record** signed by the same or another named person.

9 (c) A document of title is nonnegotiable if, at the time it is issued, the document has
10 a conspicuous legend, however expressed, that it is nonnegotiable.

400.7-105. [The omission from either part 2 or part 3 of this article of a provision
2 corresponding to a provision made in the other part does not imply that a corresponding rule of
3 law is not applicable.] (a) Upon request of a person entitled under an electronic document
4 of title, the issuer of the electronic document may issue a tangible document of title as a
5 substitute for the electronic document if:

6 (1) the person entitled under the electronic document surrenders control of the
7 document to the issuer; and

8 (2) the tangible document when issued contains a statement that it is issued in
9 substitution for the electronic document.

10 (b) Upon issuance of a tangible document of title in substitution for an electronic
11 document of title in accordance with subsection (a):

12 (1) the electronic document ceases to have any effect or validity; and

13 (2) the person that procured issuance of the tangible document warrants to all
14 subsequent persons entitled under the tangible document that the warrantor was a person
15 entitled under the electronic document when the warrantor surrendered control of the
16 electronic document to the issuer.

17 (c) Upon request of a person entitled under a tangible document of title, the issuer
18 of the tangible document may issue an electronic document of title as a substitute for the
19 tangible document if:

20 (1) the person entitled under the tangible document surrenders possession of the
21 document to the issuer; and

22 (2) the electronic document when issued contains a statement that it is issued in
23 substitution for the tangible document.

24 (d) Upon issuance of an electronic document of title in substitution for a tangible
25 document of title in accordance with subsection (c):

26 (1) the tangible document ceases to have any effect or validity; and

27 (2) the person that procured issuance of the electronic document warrants to all
28 subsequent persons entitled under the electronic document that the warrantor was a
29 person entitled under the tangible document when the warrantor surrendered possession
30 of the tangible document to the issuer.

400.7-106. (a) A person has control of an electronic document of title if a system
2 employed for evidencing the transfer of interests in the electronic document reliably
3 establishes that person as the person to which the electronic document was issued or
4 transferred.

5 (b) A system satisfies subsection (a), and a person is deemed to have control of an
6 electronic document of title, if the document is created, stored, and assigned in such a
7 manner that: (1) a single authoritative copy of the document exists which is unique,
8 identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
9 (2) the authoritative copy identifies the person asserting control as:
10 (A) the person to which the document was issued; or
11 (B) if the authoritative copy indicates that the document has been transferred, the
12 person to which the document was most recently transferred;
13 (3) the authoritative copy is communicated to and maintained by the person
14 asserting control or its designated custodian;
15 (4) copies or amendments that add or change an identified assignee of the
16 authoritative copy can be made only with the consent of the person asserting control;
17 (5) each copy of the authoritative copy and any copy of a copy is readily identifiable
18 as a copy that is not the authoritative copy; and
19 (6) any amendment of the authoritative copy is readily identifiable as authorized
20 or unauthorized.

 400.7-201. [(1)] (a) A warehouse receipt may be issued by any [warehouseman]
2 warehouse.

3 [(2) Where] (b) If goods, including distilled spirits and agricultural commodities, are
4 stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts
5 in the nature of warehouse receipts, a receipt issued for the goods [has like effect as] is deemed
6 to be a warehouse receipt even [though] if issued by a person [who] that is the owner of the
7 goods and is not a [warehouseman] warehouse.

 400.7-202. [(1)] (a) A warehouse receipt need not be in any particular form.

2 [(2)] (b) Unless a warehouse receipt [embodies within its written or printed terms]
3 provides for each of the following, the [warehouseman] warehouse is liable for damages caused
4 [by the omission] to a person injured [thereby] by its omission:

5 [(a)] (1) a statement of the location of the warehouse facility where the goods are
6 stored;

7 [(b)] (2) the date of issue of the receipt;

8 [(c)] (3) the [consecutive number] unique identification code of the receipt;

9 [(d)] (4) a statement whether the goods received will be delivered to the bearer, to a
10 [specified] named person, or to a [specified] named person or [his] its order;

11 [(e)] (5) the rate of storage and handling charges, [except that where] unless goods are
12 stored under a field warehousing arrangement, in which case a statement of that fact is sufficient
13 on a nonnegotiable receipt;

- 14 [(f)] **(6)** a description of the goods or [of] the packages containing them;
- 15 [(g)] **(7)** the signature of the [warehouseman, which may be made by his authorized]
- 16 **warehouse or its** agent;
- 17 [(h)] **(8)** if the receipt is issued for goods [of which the warehouseman is owner] **that the**
- 18 **warehouse owns**, either solely [or] , jointly, or in common with others, **a statement of** the fact
- 19 of [such] **that** ownership; and
- 20 [(i)] **(9)** a statement of the amount of advances made and of liabilities incurred for which
- 21 the [warehouseman] **warehouse** claims a lien or security interest [(section 400.7-209). If] ,
- 22 **unless** the precise amount of [such] advances made or [of such] liabilities incurred [is], at the
- 23 time of the issue of the receipt, **is** unknown to the [warehouseman] **warehouse** or to [his] **its**
- 24 agent [who issues it] **that issued the receipt, in which case** a statement of the fact that advances
- 25 have been made or liabilities incurred and the purpose [thereof] **of the advances or liabilities**
- 26 **is** sufficient.
- 27 [(3)] **(c)** A [warehouseman] **warehouse** may insert in [his] **its** receipt any [other] terms
- 28 [which] **that** are not contrary to [the provisions of] this chapter and do not impair [his] **its**
- 29 obligation of delivery [(under section 400.7-403)] or [his] **its** duty of care [(under section
- 30 400.7-204)]. Any contrary [provisions shall be] **provision is** ineffective.
- 400.7-203. A party to or purchaser for value in good faith of a document of title, other
- 2 than a bill of lading [relying in either case] , **that relies** upon the description [therein] of the
- 3 goods **in the document** may recover from the issuer damages caused by the nonreceipt or
- 4 misdescription of the goods, except to the extent that:
- 5 **(1)** the document conspicuously indicates that the issuer does not know whether [any part
- 6 or] all **or part** of the goods in fact were received or conform to the description, **such** as [where]
- 7 **a case in which** the description is in terms of marks or labels or kind, quantity, or condition, or
- 8 the receipt or description is qualified by "contents, condition, and quality unknown", "said to
- 9 contain", or [the like] **words of similar import**, if [such] **the** indication [be] **is** true[,] ; or
- 10 **(2)** the party or purchaser otherwise has notice **of the nonreceipt or misdescription**.
- 400.7-204. [(1)] **(a)** A [warehouseman] **warehouse** is liable for damages for loss of or
- 2 injury to the goods caused by [his] **its** failure to exercise [such] care [in] **with** regard to [them
- 3 as] **the goods that** a reasonably careful [man] **person** would exercise under [like] **similar**
- 4 circumstances [but] . Unless otherwise agreed [he] , **the warehouse** is not liable for damages
- 5 [which] **that** could not have been avoided by the exercise of [such] **that** care.
- 6 [(2)] **(b)** Damages may be limited by a term in the warehouse receipt or storage
- 7 agreement limiting the amount of liability in case of loss or damage[, and setting forth a specific
- 8 liability per article or item, or value per unit of weight,] beyond which the [warehouseman shall]
- 9 **warehouse is** not [be] liable; provided, however, that such liability may] . **Such a limitation**

10 **is not effective with respect to the warehouse's liability for conversion to its own use.** On
11 [written] request of the bailor **in a record** at the time of signing [such] **the** storage agreement
12 or within a reasonable time after receipt of the warehouse receipt, **the warehouse's liability may**
13 **be increased on part or all of the goods [thereunder,] covered by the storage agreement or the**
14 **warehouse receipt.** In [which] **this** event, increased rates may be charged based on [such] **an**
15 increased valuation [but that no such increase shall be permitted contrary to a lawful limitation
16 of liability contained in the warehouseman's tariff, if any. No such limitation is effective with
17 respect to the warehouseman's liability for conversion to his own use] **of the goods.**

18 [(3)] **(c)** Reasonable provisions as to the time and manner of presenting claims and
19 [instituting] **commencing** actions based on the bailment may be included in the warehouse
20 receipt or [tariff] **storage agreement.**

21 [(4)] **(d)** This section does not [impair] **modify** or repeal any existing statute of this state
22 [which] **that** imposes a higher responsibility upon the [warehouseman] **warehouse** or invalidates
23 **a contractual [limitations which] limitation that** would be permissible under this article.

400.7-205. A buyer in [the] ordinary course of business of fungible goods sold and
2 delivered by a [warehouseman who] **warehouse that** is also in the business of buying and selling
3 such goods takes **the goods** free of any claim under a warehouse receipt even [though it] **if the**
4 **receipt is negotiable and** has been duly negotiated.

400.7-206. [(1)] **(a)** A [warehouseman may on notifying] **warehouse, by giving notice**
2 **to** the person on whose account the goods are held and any other person known to claim an
3 interest in the goods, **may** require payment of any charges and removal of the goods from the
4 warehouse at the termination of the period of storage fixed by the document[, **of title** or, if [no]
5 **a** period is **not** fixed, within a stated period not less than thirty days after the [notification]
6 **warehouse gives notice.** If the goods are not removed before the date specified in the
7 [notification] **notice**, the [warehouseman] **warehouse** may sell them [in accordance with the
8 provisions of the section on enforcement of a warehouseman's lien (] **pursuant to** section
9 400.7-210)].

10 [(2)] **(b)** If a [warehouseman] **warehouse** in good faith believes that [the] goods are
11 about to deteriorate or decline in value to less than the amount of [his] **its** lien within the time
12 [prescribed] **provided** in subsection [(1) for notification, advertisement and sale] **(a) and section**
13 **400.7-210**, the [warehouseman] **warehouse** may specify in the [notification] **notice given under**
14 **subsection (a)** any reasonable shorter time for removal of the goods and [in case] , **if** the goods
15 are not removed, may sell them at public sale held not less than one week after a single
16 advertisement or posting.

17 [(3)] **(c)** If, as a result of a quality or condition of the goods of which the [warehouseman
18 had no] **warehouse did not have** notice at the time of deposit, the goods are a hazard to other

19 property, [or to] the warehouse **facilities**, or [to] **other** persons, the [warehouseman] **warehouse**
20 may sell the goods at public or private sale without advertisement **or posting** on reasonable
21 notification to all persons known to claim an interest in the goods. If the [warehouseman]
22 **warehouse**, after a reasonable effort, is unable to sell the goods [he] , **it** may dispose of them in
23 any lawful manner and [shall] **does not** incur [no] liability by reason of [such] **that** disposition.

24 [(4) The warehouseman must] **(d) A warehouse shall** deliver the goods to any person
25 entitled to them under this article upon due demand made at any time [prior to] **before** sale or
26 other disposition under this section.

27 [(5) The warehouseman] **(e) A warehouse** may satisfy [his] **its** lien from the proceeds
28 of any sale or disposition under this section but [must] **shall** hold the balance for delivery on the
29 demand of any person to [whom he] **which the warehouse** would have been bound to deliver
30 the goods.

400.7-207. [(1)] **(a)** Unless the warehouse receipt [otherwise] provides **otherwise**, a
2 [warehouseman must] **warehouse shall** keep separate the goods covered by each receipt so as
3 to permit at all times identification and delivery of those goods [except that] . **However**,
4 different lots of fungible goods may be commingled.

5 [(2)] **(b) If different lots of** fungible goods [so] **are** commingled, **the goods** are owned
6 in common by the persons entitled thereto and the [warehouseman] **warehouse** is severally liable
7 to each owner for that owner's share. [Where] **If**, because of overissue, a mass of fungible goods
8 is insufficient to meet all the receipts [which] the [warehouseman] **warehouse** has issued against
9 it, the persons entitled include all holders to [whom] **which** overissued receipts have been duly
10 negotiated.

400.7-208. [Where] **If** a blank in a negotiable **tangible** warehouse receipt has been filled
2 in without authority, a **good-faith** purchaser for value and without notice of the [want] **lack** of
3 authority may treat the insertion as authorized. Any other unauthorized alteration leaves any
4 **tangible or electronic warehouse** receipt enforceable against the issuer according to its original
5 tenor.

400.7-209. [(1)] **(a)** A [warehouseman] **warehouse** has a lien against the bailor on the
2 goods covered by a warehouse receipt or **storage agreement or** on the proceeds thereof in [his]
3 **its** possession for charges for storage or transportation [(, including demurrage and terminal
4 charges)], insurance, labor, or **other** charges, present or future, in relation to the goods, and for
5 expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant
6 to law. If the person on whose account the goods are held is liable for [like] **similar** charges or
7 expenses in relation to other goods whenever deposited and it is stated in the **warehouse** receipt
8 **or storage agreement** that a lien is claimed for charges and expenses in relation to other goods,
9 the [warehouseman] **warehouse** also has a lien against [him] **the goods covered by the**

10 **warehouse receipt or storage agreement or on the proceeds thereof in its possession** for
11 **[such] those** charges and expenses, whether or not the other goods have been delivered by the
12 **[warehouseman] warehouse. [But] However, as** against a person to **[whom] which** a negotiable
13 warehouse receipt is duly negotiated, a **[warehouseman's] warehouse's** lien is limited to charges
14 in an amount or at a rate specified **[on] in** the **warehouse** receipt or, if no charges are so
15 specified **[then] ,** to a reasonable charge for storage of the **specific** goods covered by the receipt
16 subsequent to the date of the receipt.

17 **[(2) The warehouseman] (b) A warehouse** may also reserve a security interest against
18 the bailor for **[a] the** maximum amount specified on the receipt for charges other than those
19 specified in subsection **[(1)] (a)**, such as for money advanced and interest. **[Such a] The** security
20 interest is governed by **[the article on secured transactions (article 9)]**.

21 **[(3)] (c) A [warehouseman's] warehouse's** lien for charges and expenses under
22 subsection **[(1)] (a)** or a security interest under subsection **[(2)] (b)** is also effective against any
23 person **[who] that** so entrusted the bailor with possession of the goods that a pledge of them by
24 **[him] the bailor** to a good-faith purchaser for value would have been valid **[but] . However, the**
25 **lien or security interest** is not effective against a person **[as to whom the document confers no**
26 **right in the goods covered by it under section 400.7-503] that before issuance of a document**
27 **of title had a legal interest or a perfected security interest in the goods and that did not:**

28 **(1) deliver or entrust the goods or any document of title covering the goods to the**
29 **bailor or the bailor's nominee with:**

30 **(A) actual or apparent authority to ship, store, or sell;**

31 **(B) power to obtain delivery under section 400.7-403; or**

32 **(C) power of disposition under sections 400.2-403, 400.2A-304(2), 400.2A-305(2),**
33 **400.9-320, or 400.9-321(c) or other statute or rule of law; or**

34 **(2) acquiesce in the procurement by the bailor or its nominee of any document.**

35 **[(4)] (d) A warehouse's lien on household goods for charges and expenses in**
36 **relation to the goods under subsection (a) is also effective against all persons if the**
37 **depositor was the legal possessor of the goods at the time of deposit. In this subsection,**
38 **"household goods" means furniture, furnishings, or personal effects used by the depositor**
39 **in a dwelling.**

40 **(e) A [warehouseman] warehouse** loses **[his] its** lien on any goods **[which he] that it**
41 voluntarily delivers or **[which he] unjustifiably** refuses to deliver.

400.7-210. **[(1)] (a)** Except as **otherwise** provided in subsection **[(2)] (b)**, a
2 **[warehouseman's] warehouse's** lien may be enforced by public or private sale of the goods, in
3 **[bloc] bulk** or in **[parcels] packages**, at any time or place and on any terms **[which] that** are
4 commercially reasonable, after notifying all persons known to claim an interest in the goods.

5 [Such] **The** notification must include a statement of the amount due, the nature of the proposed
6 sale, and the time and place of any public sale. The fact that a better price could have been
7 obtained by a sale at a different time or in a [different] method **different** from that selected by
8 the [warehouseman] **warehouse** is not of itself sufficient to establish that the sale was not made
9 in a commercially reasonable manner. **The warehouse sells in a commercially reasonable**
10 **manner** if the [warehouseman either] **warehouse** sells the goods in the usual manner in any
11 recognized market [therefor] **therefore**, [or if he] sells at the price current in [such] **that** market
12 at the time of [his] **the** sale, or [if he has] otherwise [sold] **sells** in conformity with commercially
13 reasonable practices among dealers in the type of goods sold[, he has sold in a commercially
14 reasonable manner]. A sale of more goods than apparently necessary to be offered to [insure]
15 **ensure** satisfaction of the obligation is not commercially reasonable, except in cases covered by
16 the preceding sentence.

17 [(2)] **(b)** A [warehouseman's] **warehouse may enforce its** lien on goods, other than
18 goods stored by a merchant in the course of [his] **its** business [may be enforced only as follows]
19 **, only if the following requirements are satisfied:**

20 [(a)] **(1)** All persons known to claim an interest in the goods must be notified.

21 [(b)] The notification must be delivered in person or sent by registered or certified letter
22 to the last known address of any person to be notified.

23 [(c)] **(2)** The notification must include an itemized statement of the claim, a description
24 of the goods subject to the lien, a demand for payment within a specified time not less than ten
25 days after receipt of the notification, and a conspicuous statement that unless the claim is paid
26 within that time the goods will be advertised for sale and sold by auction at a specified time and
27 place.

28 [(d)] **(3)** The sale must conform to the terms of the notification.

29 [(e)] **(4)** The sale must be held at the nearest suitable place to [that] where the goods are
30 held or stored.

31 [(f)] **(5)** After the expiration of the time given in the notification, an advertisement of the
32 sale must be published once a week for two weeks consecutively in a newspaper of general
33 circulation where the sale is to be held. The advertisement must include a description of the
34 goods, the name of the person on whose account [they] **the goods** are being held, and the time
35 and place of the sale. The sale must take place at least fifteen days after the first publication.
36 If there is no newspaper of general circulation where the sale is to be held, the advertisement
37 must be posted at least ten days before the sale in not [less] **fewer** than six conspicuous places
38 in the neighborhood of the proposed sale.

39 [(3)] **(c)** Before any sale pursuant to this section, any person claiming a right in the goods
40 may pay the amount necessary to satisfy the lien and the reasonable expenses incurred [under]

41 **in complying with** this section. In that event, the goods [must] **may** not be sold[,] but must be
42 retained by the [warehouseman] **warehouse** subject to the terms of the receipt and this article.

43 [(4) The warehouseman] **(d) A warehouse** may buy at any public sale **held** pursuant to
44 this section.

45 [(5)] **(e)** A purchaser in good faith of goods sold to enforce a [warehouseman's]
46 **warehouse's** lien takes the goods free of any rights of persons against [whom] **which** the lien
47 was valid, despite **the warehouse's** noncompliance [by the warehouseman] with [the
48 requirements of] this section.

49 [(6) The warehouseman] **(f) A warehouse** may satisfy [his] **its** lien from the proceeds
50 of any sale pursuant to this section but [must] **shall** hold the balance, if any, for delivery on
51 demand to any person to [whom he] **which the warehouse** would have been bound to deliver
52 the goods.

53 [(7)] **(g)** The rights provided by this section [shall be] **are** in addition to all other rights
54 allowed by law to a creditor against [his] **a** debtor.

55 [(8) Where] **(h) If** a lien is on goods stored by a merchant in the course of [his] **its**
56 business, the lien may be enforced in accordance with [either] subsection [(1)] **(a)** or [(2)] **(b)**.

57 [(9) The warehouseman] **(i) A warehouse** is liable for damages caused by failure to
58 comply with the requirements for sale under this section and, in case of willful violation, is liable
59 for conversion.

400.7-301. [(1)] **(a)** A consignee of a nonnegotiable bill [who] **of lading which** has
2 given value in good faith, or a holder to [whom] **which** a negotiable bill has been duly
3 negotiated, relying [in either case] upon the description [therein] of the goods[.] **in the bill** or
4 upon the date [therein] shown **in the bill**, may recover from the issuer damages caused by the
5 misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that
6 the [document] **bill** indicates that the issuer does not know whether any part or all of the goods
7 in fact were received or conform to the description, **such** as [where] **in a case in which** the
8 description is in terms of marks or labels or kind, quantity, or condition or the receipt or
9 description is qualified by "contents or condition of contents of packages unknown", "said to
10 contain", "shipper's weight, load, and count", or [the like] **words of similar import**, if [such]
11 **that** indication [be] **is** true.

12 [(2) When] **(b) If** goods are loaded by [an] **the** issuer [who is a common carrier,] **of a**
13 **bill of lading;**

14 **(1)** the issuer [must] **shall** count the packages of goods if [package freight] **shipped in**
15 **packages** and ascertain the kind and quantity if **shipped in** bulk [freight. In such cases] ; **and**

16 (2) words such as "shipper's weight, load, and count" or [other] words of similar
 17 **import** indicating that the description was made by the shipper are ineffective except as to
 18 [freight] **goods** concealed [by] **in** packages.

19 [(3) When] (c) **If** bulk [freight is] **goods are** loaded by a shipper [who] **that** makes
 20 available to the issuer **of a bill of lading** adequate facilities for weighing [such freight, an] **those**
 21 **goods, the** issuer [who is a common carrier must] **shall** ascertain the kind and quantity within
 22 a reasonable time after receiving the [written] **shipper's** request [of the shipper] **in a record** to
 23 do so. In [such cases] **that case,** "shipper's weight" or [other] words of [like purport] **similar**
 24 **import** are ineffective.

25 [(4)] (d) The issuer [may] **of a bill of lading,** by [inserting] **including** in the bill the
 26 words "shipper's weight, load, and count" or [other] words of [like purport] **similar import, may**
 27 indicate that the goods were loaded by the shipper[;] , and, if [such] **that** statement [be] **is** true,
 28 the issuer [shall] **is** not [be] liable for damages caused by the improper loading. [But their]
 29 **However,** omission **of such words** does not imply liability for [such] damages **caused by**
 30 **improper loading.**

31 [(5) The] (e) A shipper [shall be deemed to have guaranteed] **guarantees** to [the] **an**
 32 issuer the accuracy at the time of shipment of the description, marks, labels, number, kind,
 33 quantity, condition, and weight, as furnished by [him;] **the shipper,** and the shipper shall
 34 indemnify the issuer against damage caused by inaccuracies in [such] **those** particulars. [The]
 35 **This** right of [the issuer to such] indemnity [shall in no way] **does not** limit [his] **the issuer's**
 36 responsibility [and] **or** liability under the contract of carriage to any person other than the
 37 shipper.

 400.7-302. [(1)] (a) The issuer of a through bill of lading, or other document **of title**
 2 embodying an undertaking to be performed in part by [persons] **a person** acting as its [agents]
 3 **agent** or by [connecting carriers] **a performing carrier,** is liable to [anyone] **any person** entitled
 4 to recover on the **bill or other** document for any breach by [such] **the other** [persons] **person** or
 5 [by a connecting] **the performing** carrier of its obligation under the [document but] **bill or other**
 6 **document. However,** to the extent that the bill **or other document** covers an undertaking to
 7 be performed overseas or in territory not contiguous to the continental United States or an
 8 undertaking including matters other than transportation, this liability **for breach by the other**
 9 **person or the performing carrier** may be varied by agreement of the parties.

10 [(2) Where] (b) **If** goods covered by a through bill of lading or other document **of title**
 11 embodying an undertaking to be performed in part by [persons] **a person** other than the issuer
 12 are received by [any such] **that person,** [he] **the person** is subject, with respect to [his] **its** own
 13 performance while the goods are in [his] **its** possession, to the obligation of the issuer. [His] **The**
 14 **person's** obligation is discharged by delivery of the goods to another [such] person pursuant to

15 the **bill or other** document[,] and does not include liability for breach by any other [such
16 persons] **person** or by the issuer.

17 [(3)] (c) The issuer of [such] **a** through bill of lading or other document [shall be] **of title**
18 **described in subsection (a)** is entitled to recover from the [connecting] **performing** carrier, or
19 [such] other person in possession of the goods when the breach of the obligation under the **bill**
20 **or other** document occurred[,] :

21 (1) the amount it may be required to pay to [anyone] **any person** entitled to recover on
22 the **bill or other** document [therefor] **for the breach**, as may be evidenced by any receipt,
23 judgment, or transcript [thereof,] **of judgment**; and

24 (2) the amount of any expense reasonably incurred by [it] **the issuer** in defending any
25 action [brought] **commenced** by [anyone] **any person** entitled to recover on the **bill or other**
26 document [therefor] **for the breach**.

400.7-303. [(1)] (a) Unless the bill of lading otherwise provides, [the] **a** carrier may
2 deliver the goods to a person or destination other than that stated in the bill or may otherwise
3 dispose of the goods, **without liability for misdelivery**, on instructions from:

4 [(a)] (1) the holder of a negotiable bill; [or]

5 [(b)] (2) the consignor on a nonnegotiable bill [notwithstanding] , **even if the consignee**
6 **has given** contrary instructions [from the consignee]; [or]

7 [(c)] (3) the consignee on a nonnegotiable bill in the absence of contrary instructions
8 from the consignor, if the goods have arrived at the billed destination or if the consignee is in
9 possession of the **tangible bill or in control of the electronic bill**; or

10 [(d)] (4) the consignee on a nonnegotiable bill, if [he] **the consignee** is entitled as against
11 the consignor to dispose of [them] **the goods**.

12 [(2)] (b) Unless [such] instructions **described in subsection (a)** are [noted on] **included**
13 **in** a negotiable bill of lading, a person to [whom] **which** the bill is duly negotiated [can] **may**
14 hold the bailee according to the original terms.

400.7-304. [(1)] (a) Except [where] **as** customary in [overseas] **international**
2 transportation, a **tangible** bill of lading [must] **may** not be issued in a set of parts. The issuer is
3 liable for damages caused by violation of this subsection.

4 [(2) Where] (b) **If a tangible** bill of lading is lawfully [drawn] **issued** in a set of parts,
5 each of which [is numbered] **contains an identification code** and **is** expressed to be valid only
6 if the goods have not been delivered against any other part, the whole of the parts [constitute]
7 **constitutes** one bill.

8 [(3) Where] (c) **If a tangible negotiable** bill of lading is lawfully issued in a set of parts
9 and different parts are negotiated to different persons, the title of the holder to [whom] **which**
10 the first due negotiation is made prevails as to both the document **of title** and the goods even

11 [though] **if** any later holder may have received the goods from the carrier in good faith and
 12 discharged the carrier's obligation by [surrender of his] **surrendering its** part.

13 [(4) Any] **(d) A** person [who] **that** negotiates or transfers a single part of a **tangible** bill
 14 of lading [drawn] **issued** in a set is liable to holders of that part as if it were the whole set.

15 [(5)] **(e)** The bailee [is obliged to] **shall** deliver in accordance with part 4 of this article
 16 against the first presented part of a **tangible** bill of lading lawfully [drawn] **issued** in a set.
 17 [Such] Delivery **in this manner** discharges the bailee's obligation on the whole bill.

400.7-305. [(1)] **(a)** Instead of issuing a bill of lading to the consignor at the place of
 2 shipment, a carrier [may] , at the request of the consignor, **may** procure the bill to be issued at
 3 destination or at any other place designated in the request.

4 [(2)] **(b)** Upon request of [anyone] **any person** entitled as against [the] **a** carrier to
 5 control the goods while in transit and on surrender of **possession or control of** any outstanding
 6 bill of lading or other receipt covering [such] **the** goods, the issuer, **subject to section 7-105,**
 7 may procure a substitute bill to be issued at any place designated in the request.

400.7-307. [(1)] **(a)** A carrier has a lien on the goods covered by a bill of lading **or on**
 2 **the proceeds thereof in its possession** for charges [subsequent to] **after** the date of [its] **the**
 3 **carrier's** receipt of the goods for storage or transportation [(], including demurrage and terminal
 4 charges[)] , and for expenses necessary for preservation of the goods incident to their
 5 transportation or reasonably incurred in their sale pursuant to law. [But] **However,** against a
 6 purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in
 7 the bill or the applicable tariffs[, or, if no charges are stated [then to] , a reasonable charge.

8 [(2)] **(b)** A lien for charges and expenses under subsection [(1)] **(a)** on goods [which]
 9 **that** the carrier was required by law to receive for transportation is effective against the
 10 consignor or any person entitled to the goods unless the carrier had notice that the consignor
 11 lacked authority to subject the goods to [such] **those** charges and expenses. Any other lien under
 12 subsection [(1)] **(a)** is effective against the consignor and any person [who] **that** permitted the
 13 bailor to have control or possession of the goods unless the carrier had notice that the bailor
 14 lacked [such] authority.

15 [(3)] **(c)** A carrier loses [his] **its** lien on any goods [which he] **that it** voluntarily delivers
 16 or [which he] unjustifiably refuses to deliver.

400.7-308. [(1)] **(a)** A carrier's lien **on goods** may be enforced by public or private sale
 2 of the goods, in [bloc] **bulk** or in [parcels] **packages**, at any time or place and on any terms
 3 [which] **that** are commercially reasonable, after notifying all persons known to claim an interest
 4 in the goods. [Such] **The** notification must include a statement of the amount due, the nature of
 5 the proposed sale, and the time and place of any public sale. The fact that a better price could
 6 have been obtained by a sale at a different time or in a [different] method **different** from that

7 selected by the carrier is not of itself sufficient to establish that the sale was not made in a
8 commercially reasonable manner. [If] The carrier [either] **sells goods in a commercially**
9 **reasonable manner if the carrier** sells the goods in the usual manner in any recognized market
10 therefor [or if he] , sells at the price current in [such] **that** market at the time of [his] **the** sale, or
11 [if he has] otherwise [sold] **sells** in conformity with commercially reasonable practices among
12 dealers in the type of goods sold [he has sold in a commercially reasonable manner]. A sale of
13 more goods than apparently necessary to be offered to [insure] **ensure** satisfaction of the
14 obligation is not commercially reasonable, except in cases covered by the preceding sentence.

15 [(2)] **(b)** Before any sale pursuant to this section, any person claiming a right in the
16 goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred
17 [under] **in complying with** this section. In that event, the goods [must] **may** not be sold[,] but
18 must be retained by the carrier, subject to the terms of the bill **of lading** and this article.

19 [(3)] **(c)** A carrier may buy at any public sale pursuant to this section.

20 [(4)] **(d)** A purchaser in good faith of goods sold to enforce a carrier's lien takes the
21 goods free of any rights of persons against [whom] **which** the lien was valid, despite **the**
22 **carrier's** noncompliance [by the carrier] with [the requirements of] this section.

23 [(5)] **(e)** A carrier may satisfy [his] **its** lien from the proceeds of any sale pursuant
24 to this section but [must] **shall** hold the balance, if any, for delivery on demand to any person to
25 [whom he] **which the carrier** would have been bound to deliver the goods.

26 [(6)] **(f)** The rights provided by this section [shall be] **are** in addition to all other rights
27 allowed by law to a creditor against [his] **a** debtor.

28 [(7)] **(g)** A carrier's lien may be enforced [in accordance with] **pursuant to** either
29 subsection [(1)] **(a)** or the procedure set forth in [subsection (2) of] section [400.7-210] **400.7-**
30 **210(b)**.

31 [(8)] **(h)** A carrier is liable for damages caused by failure to comply with the
32 requirements for sale under this section and, in case of willful violation, is liable for conversion.

400.7-309. [(1)] **(a)** A carrier [who] **that** issues a bill of lading, whether negotiable or
2 nonnegotiable [must] , **shall** exercise the degree of care in relation to the goods which a
3 reasonably careful [man] **person** would exercise under [like] **similar** circumstances. This
4 subsection does not [repeal or change] **affect** any [law] **statute, regulation,** or rule of law
5 [which] **that** imposes liability upon a common carrier for damages not caused by its negligence.

6 [(2)] **(b)** Damages may be limited by a [provision] **term in the bill of lading or in a**
7 **transportation agreement** that the carrier's liability [shall] **may** not exceed a value stated in the
8 [document] **bill or transportation agreement** if the carrier's rates are dependent upon value and
9 the consignor [by the carrier's tariff] is afforded an opportunity to declare a higher value [or a
10 value as lawfully provided in the tariff, or where no tariff is filed he] **and the consignor** is

11 [otherwise] advised of [such] **the** opportunity[; but no] . **However**, such **a** limitation is **not**
 12 effective with respect to the carrier's liability for conversion to its own use.

13 [(3)] **(c)** Reasonable provisions as to the time and manner of presenting claims and
 14 [instituting] **commencing** actions based on the shipment may be included in a bill of lading or
 15 [tariff] **a transportation agreement**.

400.7-401. The obligations imposed by this article on an issuer apply to a document of
 2 title [regardless of the fact that

3 **(a)] even if:**

4 **(1)** the document [may] **does** not comply with the requirements of this article or of any
 5 other [law] **statute, rule**, or regulation regarding its [issue] **issuance**, form, or content; [or

6 **(b)] (2)** the issuer [may have] violated laws regulating the conduct of [his] **its** business;
 7 [or

8 **(c)] (3)** the goods covered by the document were owned by the bailee [at the time] **when**
 9 the document was issued; or

10 [(d)] **(4)** the person issuing the document [does] **is** not [come within the definition of
 11 warehouseman] **a warehouse** [if it] **but the document** purports to be a warehouse receipt.

400.7-402. [Neither] A duplicate [nor] **or** any other document of title purporting to cover
 2 goods already represented by an outstanding document of the same issuer [confers] **does not**
 3 **confer** any right in the goods, except as provided in the case of **tangible bills of lading** in a set
 4 **of parts**, overissue of documents for fungible goods [and] , substitutes for lost, stolen, or
 5 destroyed documents, **or substitute documents issued pursuant to section 400.7-105**. [But]
 6 The issuer is liable for damages caused by [his] **its** overissue or failure to identify a duplicate
 7 document [as such] by **a** conspicuous notation [on its face].

400.7-403. [(1) The] **(a) A** bailee [must] **shall** deliver the goods to a person entitled
 2 under [the] **a** document [who] **of title if the person** complies with subsections [(2)] **(b)** and [(3)]
 3 **(c)**, unless and to the extent that the bailee establishes any of the following:

4 [(a)] **(1)** delivery of the goods to a person whose receipt was rightful as against the
 5 claimant;

6 [(b)] **(2)** damage to or delay, loss, or destruction of the goods for which the bailee is not
 7 liable;

8 [(c)] **(3)** previous sale or other disposition of the goods in lawful enforcement of a lien
 9 or on [warehouseman's] **a warehouse's** lawful termination of storage;

10 [(d)] **(4)** the exercise by a seller of [his] **its** right to stop delivery pursuant to [the
 11 provisions of the article on sales (] section 400.2-705 [)] **or by a lessor of its right to stop**
 12 **delivery pursuant to section 400.2A-526;**

13 [(e)] **(5)** a diversion, reconsignment, or other disposition pursuant to [the provisions of
14 this article (] section 400.7-303 [) or tariff regulating such right];

15 [(f)] **(6)** release, satisfaction, or any other [fact affording a] personal defense against the
16 claimant; **or**

17 [(g)] **(7)** any other lawful excuse.

18 [(2)] **(b)** A person claiming goods covered by a document of title [must] **shall** satisfy the
19 bailee's lien [where] **if** the bailee so requests or [where] **if** the bailee is prohibited by law from
20 delivering the goods until the charges are paid.

21 [(3)] **(c)** Unless [the] **a** person claiming **the goods** is [one] **a person** against [whom]
22 **which** the document [confers no] **of title does not confer a** right under section [400.7-503(1),
23 he must] **400.7-503(a):**

24 **(1) the person claiming under a document shall** surrender [for cancellation or
25 notation] **possession or control** of [partial deliveries] any outstanding negotiable document
26 covering the goods[,] **for cancellation or indication of partial deliveries;** and

27 **(2)** the bailee [must] **shall** cancel the document or conspicuously [note] **indicate in the**
28 **document** the partial delivery [thereon] or [be] **the bailee is** liable to any person to [whom]
29 **which** the document is duly negotiated.

30 [(4)] "Person entitled under the document" means holder in the case of a negotiable
31 document, or the person to whom delivery is to be made by the terms of or pursuant to written
32 instructions under a nonnegotiable document.]

 400.7-404. A bailee [who] **that** in good faith [including observance of reasonable
2 commercial standards] has received goods and delivered or otherwise disposed of [them] **the**
3 **goods** according to the terms of [the] **a** document of title or pursuant to this article is not liable
4 [therefor. This rule applies] **for the goods** even [though] **if:**

5 **(1)** the person from [whom he] **which the bailee** received the goods [had no] **did not**
6 **have** authority to procure the document or to dispose of the goods [and even though] ; **or**

7 **(2)** the person to [whom he] **which the bailee** delivered the goods [had no] **did not have**
8 authority to receive [them] **the goods.**

 400.7-501. [(1)] **(a) The following rules apply to** a negotiable **tangible** document of
2 title [running] :

3 **(1) If the document's original terms run** to the order of a named person, **the document**
4 is negotiated by [his endorsement] **the named person's indorsement** and delivery. After [his
5 endorsement] **the named person's indorsement** in blank or to bearer, any person [can] **may**
6 negotiate [it] **the document** by delivery alone.

7 **(2)** [(a) A negotiable document of title] **If the document's original terms run to**
8 **bearer, it is** [also] negotiated by delivery alone [when by its original terms it runs to bearer].

9 [(b) When a document running] **(3) If the document's original terms run** to the order
10 of a named person **and it** is delivered to [him] **the named person**, the effect is the same as if the
11 document had been negotiated.

12 [(3)] **(4)** Negotiation of [a negotiable] **the** document [of title] after it has been [endorsed]
13 **indorsed** to a [specified] **named** person requires [endorsement] **indorsement** by the [special
14 endorsee as well as] **named person and** delivery.

15 [(4)] **(5)** A [negotiable] document [of title] is ["duly negotiated]" when] **if** it is
16 negotiated in the manner stated in this [section] **subsection** to a holder [who] **that** purchases it
17 in good faith, without notice of any defense against or claim to it on the part of any person, and
18 for value, unless it is established that the negotiation is not in the regular course of business or
19 financing or involves receiving the document in settlement or payment of a [money] **monetary**
20 obligation.

21 [(5) Endorsement] **(b) The following rules apply to a negotiable electronic document**
22 **of title:**

23 **(1) If the document's original terms run to the order of a named person or to**
24 **bearer, the document is negotiated by delivery of the document to another person.**
25 **Indorsement by the named person is not required to negotiate the document.**

26 **(2) If the document's original terms run to the order of a named person and the**
27 **named person has control of the document, the effect is the same as if the document had**
28 **been negotiated.**

29 **(3) A document is duly negotiated if it is negotiated in the manner stated in this**
30 **subsection to a holder that purchases it in good faith, without notice of any defense against**
31 **or claim to it on the part of any person, and for value, unless it is established that the**
32 **negotiation is not in the regular course of business or financing or involves taking delivery**
33 **of the document in settlement or payment of a monetary obligation.**

34 **(c) Indorsement** of a nonnegotiable document **of title** neither makes it negotiable nor
35 adds to the transferee's rights.

36 [(6)] **(d)** The naming in a negotiable bill **of lading** of a person to be notified of the
37 arrival of the goods does not limit the negotiability of the bill [nor] **or** constitute notice to a
38 purchaser [thereof] **of the bill** of any interest of [such] **that** person in the goods.

 400.7-502. [(1)] **(a)** Subject to [the following section and to the provisions of section]
2 **sections 400.7-205 [on fungible goods] and 400.7-503**, a holder to [whom] **which** a negotiable
3 document of title has been duly negotiated acquires thereby:

4 [(a)] **(1)** title to the document;

5 [(b)] **(2)** title to the goods;

6 [(c)] **(3)** all rights accruing under the law of agency or estoppel, including rights to goods
7 delivered to the bailee after the document was issued; and

8 [(d)] **(4)** the direct obligation of the issuer to hold or deliver the goods according to the
9 terms of the document free of any defense or claim by [him] **the issuer** except those arising
10 under the terms of the document or under this article[.] , **but** in the case of a delivery order, the
11 bailee's obligation accrues only upon **the bailee's acceptance of the delivery order** and the
12 obligation acquired by the holder is that the issuer and any [endorser] **indorser** will procure the
13 acceptance of the bailee.

14 [(2)] **(b)** Subject to [the following] section **400.7-503**, title and rights [so] acquired by
15 **due negotiation** are not defeated by any stoppage of the goods represented by the document **of**
16 **title** or by surrender of [such] **the** goods by the bailee[,] and are not impaired even [though] **if:**

17 **(1)** the **due** negotiation or any prior **due** negotiation constituted a breach of duty [or even
18 though] ;

19 **(2)** any person has been deprived of possession of [the] **a negotiable tangible document**
20 **or control of a negotiable electronic** document by misrepresentation, fraud, accident, mistake,
21 duress, loss, theft, or conversion[,] ; or [even though]

22 **(3)** a previous sale or other transfer of the goods or document has been made to a third
23 person.

 400.7-503. [(1)] **(a)** A document of title confers no right in goods against a person [who]
2 **that** before issuance of the document had a legal interest or a perfected security interest in [them]
3 **the goods** and [who neither

4 (a) delivered] **that did not:**

5 **(1)** **deliver** or [entrusted them] **entrust the goods** or any document of title covering
6 [them] **the goods** to the bailor or [his or her] **the bailor's** nominee with:

7 **(A)** actual or apparent authority to ship, store, or sell [or with] ;

8 **(B)** power to obtain delivery under [this article ([section 400.7-403])] ; or [with]

9 **(C)** power of disposition under [this chapter (sections] **section 400.2-403** [and] ,
10 **400.2A-304(2), 400.2A-305(2), 400.9-320[]** , **or 9-321(c)** or other statute or rule of law; [nor

11 (b) acquiesced] **or**

12 **(2)** **acquiesce** in the procurement by the bailor or [his or her] **its** nominee of any
13 document [of title].

14 [(2)] **(b)** Title to goods based upon an unaccepted delivery order is subject to the rights
15 of [anyone] **any person** to [whom] **which** a negotiable warehouse receipt or bill of lading
16 covering the goods has been duly negotiated. [Such a] **That** title may be defeated under section
17 400.7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

18 [(3)] (c) Title to goods based upon a bill of lading issued to a freight forwarder is subject
19 to the rights of [anyone] **any person** to [whom] **which** a bill issued by the freight forwarder is
20 duly negotiated[; but] . **However**, delivery by the carrier in accordance with part 4 of this article
21 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

400.7-504. [(1)] (a) A transferee of a document **of title**, whether negotiable or
2 nonnegotiable, to [whom] **which** the document has been delivered but not duly negotiated,
3 acquires the title and rights [which his] **that its** transferor had or had actual authority to convey.

4 [(2)] (b) In the case of a **transfer of a nonnegotiable document of title**, until but not after
5 the bailee receives [notification] **notice** of the transfer, the rights of the transferee may be
6 defeated:

7 [(a)] (1) by those creditors of the transferor [who] **which** could treat the [sale] **transfer**
8 as void under section 400.2-402 **or 400.2A-308**; [or

9 (b)] (2) by a buyer from the transferor in ordinary course of business if the bailee has
10 delivered the goods to the buyer or received notification of [his] **the buyer's** rights;

11 (3) **by a lessee from the transferor in ordinary course of business if the bailee has**
12 **delivered the goods to the lessee or received notification of the lessee's rights**; or

13 [(c)] (4) as against the bailee, by good-faith dealings of the bailee with the transferor.

14 [(3)] (c) A diversion or other change of shipping instructions by the consignor in a
15 nonnegotiable bill of lading which causes the bailee not to deliver **the goods** to the consignee
16 defeats the consignee's title to the goods if [they] **the goods** have been delivered to a buyer in
17 ordinary course of business **or a lessee in ordinary course of business** and, in any event, defeats
18 the consignee's rights against the bailee.

19 [(4)] (d) Delivery **of the goods** pursuant to a nonnegotiable document **of title** may be
20 stopped by a seller under section 400.2-705 **or a lessor under section 400.2A-526**, [and] subject
21 to the [requirement] **requirements** of due notification [there provided] **in those sections**. A
22 bailee [honoring] **that honors** the seller's **or lessor's** instructions is entitled to be indemnified
23 by the seller **or lessor** against any resulting loss or expense.

400.7-505. The [endorsement] **indorsement** of a **tangible** document of title issued by
2 a bailee does not make the [endorser] **indorser** liable for any default by the bailee or [by]
3 previous [endorsers] **indorsers**.

400.7-506. The transferee of a negotiable **tangible** document of title has a specifically
2 enforceable right to have [his] **its** transferor supply any necessary [endorsement] **indorsement**,
3 but the transfer becomes a negotiation only as of the time the [endorsement] **indorsement** is
4 supplied.

400.7-507. [Where] **If** a person negotiates or [transfers] **delivers** a document of title for
2 value, otherwise than as a mere intermediary under section 400.7-508, [then] unless otherwise

3 agreed [he] , **the transferor, in addition to any warranty made in selling or leasing the**
4 **goods**, warrants to [his] **its** immediate purchaser only [in addition to any warranty made in
5 selling the goods

6 (a)] that:

7 (1) the document is genuine; [and

8 (b) that he has no] (2) **the transferor does not have** knowledge of any fact [which] **that**
9 would impair [its] **the document's** validity or worth; and

10 [(c) that his] (3) **the** negotiation or [transfer] **delivery** is rightful and fully effective with
11 respect to the title to the document and the goods it represents.

400.7-508. A collecting bank or other intermediary known to be entrusted with
2 documents **of title** on behalf of another or with collection of a draft or other claim against
3 delivery of documents warrants by [such] **the** delivery of the documents only its own good faith
4 and authority[. This rule applies] even [though] **if the collecting bank or other** intermediary
5 has purchased or made advances against the claim or draft to be collected.

400.7-509. [The question] Whether a document **of title** is adequate to fulfill the
2 obligations of a contract for sale, **a contract for lease**, or the conditions of a **letter of credit** is
3 [governed] **determined** by [the articles on sales (] article 2 [) and on letters of credit (article] ,
4 **2A, or 5[)].**

400.7-601. [(1)] (a) If a document [has been] **of title is** lost, stolen, or destroyed, a court
2 may order delivery of the goods or issuance of a substitute document and the bailee may without
3 liability to any person comply with [such] **the** order. If the document was negotiable [the
4 claimant must post] , **a court may not order delivery of the goods or issuance of a substitute**
5 **document without the claimant's posting** security [approved by the court to indemnify] **unless**
6 **it finds that** any person [who] **that** may suffer loss as a result of nonsurrender of **possession or**
7 **control of** the document **is adequately protected against the loss**. If the document was [not
8 negotiable] **nonnegotiable**, [such security may be required at the discretion of] the court **may**
9 **require security**. The court may also [in its discretion] order payment of the bailee's reasonable
10 costs and [counsel] **attorney's fees in any action under this subsection**.

11 [(2)] (b) A bailee [who] **that**, without a court order, delivers goods to a person claiming
12 under a missing negotiable document **of title** is liable to any person injured thereby[, and] . If
13 the delivery is not in good faith [becomes] , **the bailee is** liable for conversion. Delivery in good
14 faith is not conversion [if made in accordance with a filed classification or tariff or, where no
15 classification or tariff is filed,] if the claimant posts security with the bailee in an amount at least
16 double the value of the goods at the time of posting to indemnify any person injured by the
17 delivery [who] **which** files a notice of claim within one year after the delivery.

400.7-602. [Except where the] **Unless a document of title** was originally issued upon
2 delivery of the goods by a person [who had no] **that did not have** power to dispose of them, [no]
3 **a lien [attaches] does not attach** by virtue of any judicial process to goods in the possession of
4 a bailee for which a negotiable document of title is outstanding unless **possession or control of**
5 the document [be] **is** first surrendered to the bailee or [its] **the document's** negotiation **is**
6 enjoined[, and] . The bailee [shall] **may** not be compelled to deliver the goods pursuant to
7 process until **possession or control of** the document is surrendered to [him] **the bailee** or
8 [impounded by] **to** the court. [One who purchases] **A purchaser of** the document for value
9 without notice of the process or injunction takes free of the lien imposed by judicial process.

400.7-603. If more than one person claims title **to** or possession of the goods, the bailee
2 is excused from delivery until [he] **the bailee** has [had] a reasonable time to ascertain the validity
3 of the adverse claims or to [bring] **commence** an action [to compel all claimants to interplead
4 and may compel such] **for interpleader. The bailee may assert an** interpleader[,] either in
5 defending an action for nondelivery of the goods[, or by original action[, whichever is
6 appropriate].

400.7-703. This chapter applies to a document of title that is issued or a bailment
2 **that arises on or after the effective date of this chapter. This chapter does not apply to a**
3 **document of title that is issued or a bailment that arises before the effective date of this**
4 **chapter even if the document of title or bailment would be subject to this chapter if the**
5 **document of title had been issued or bailment had arisen on or after the effective date of**
6 **this chapter. This chapter does not apply to a right of action that has accrued before the**
7 **effective date of this chapter.**

400.7-704. A document of title issued or a bailment that arises before the effective
2 **date of this chapter and the rights, obligations, and interests flowing from that document**
3 **or bailment are governed by any statute or other rule amended or repealed by this chapter**
4 **as if amendment or repeal had not occurred and may be terminated, completed,**
5 **consummated, or enforced under that statute or other rule.**

[400.1-207. (1) A party who, with explicit reservation of rights, performs
2 or promises performance or assents to performance in a manner demanded or
3 offered by the other party does not thereby prejudice the rights reserved. Such
4 words as "without prejudice", "under protest" or the like are sufficient.

5 (2) Subsection (1) does not apply to an accord and satisfaction.]
6

[400.1-208. A term providing that one party or his successor in interest
2 may accelerate payment or performance or require collateral or additional
3 collateral "at will" or "when he deems himself insecure" or in words of similar
4 import shall be construed to mean that he shall have power to do so only if he in
5 good faith believes that the prospect of payment or performance is impaired. The

6 burden of establishing lack of good faith is on the party against whom the power
7 has been exercised.]

8

2 [400.7-604. To the extent that the provisions of this article conflict with
3 the provisions of sections 415.400 to 415.430 the provisions of sections 415.400
 to 415.430 shall control.]

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